

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC,

Plaintiff,

v.

MASIMO CORPORATION and SOUND
UNITED, LLC,

Defendants.

Civil Action No. 22-1377 (MN) (JLH)

REDACTED - PUBLIC VERSION

APPLE INC,

Plaintiff,

v.

MASIMO CORPORATION and SOUND
UNITED, LLC,

Defendants.

Civil Action No. 22-1378 (MN) (JLH)

REDACTED - PUBLIC VERSION

LETTER TO THE HONORABLE JENNIFER L. HALL FROM JOHN C. PHILLIPS, JR.

John C. Phillips, Jr. (No. 110)
Megan C. Haney (No. 5016)
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Dated: July 3, 2023

Attorneys for Defendants

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Dear Judge Hall:

Masimo writes in response to Apple's June 29, 2023 Letter to the Court regarding Discovery Dispute. D.I. 142 in C.A. No. 22-1377; D.I. 137 in C.A. No. 22-1378 ("Ltr. Br.").

Apple presents no dispute for the Court to resolve. Masimo has already agreed to produce samples of its W1 watch, which is the only watch it has commercialized. [REDACTED]

[REDACTED]: the W1 with the wave electrode ("redesign"), the Freedom Watch, or the Freedom Band (Masimo's "Forthcoming Products"). Thus, putting aside that Apple's discovery request does not cover Masimo's Forthcoming Products, Masimo lacks any commercial versions to produce. Nevertheless, Masimo invited Apple to inspect the devices Masimo does have.

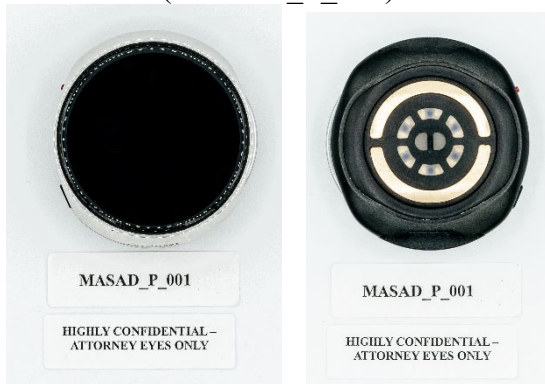
Apple requested "[t]hree (3) physical products for each Accused Product in the condition that it is currently provided *commercially* to customers, laboratories, and/or healthcare providers." Ltr. Br., Ex. B at 13 (emphasis added). As Masimo repeatedly told Apple, Masimo has not started selling the Forthcoming Products, and [REDACTED]. Indeed, Apple acknowledges Masimo will not commercially release these products until later this year. Ltr. Br. at 3. Masimo thus has no samples of the Forthcoming Products that have been or will be commercially provided to anyone.

Masimo nevertheless offered to provide three samples of the commercially available W1. Ex. 1 at 1. Masimo also offered to allow Apple to inspect prototypes of the Forthcoming Products. Ltr. Br., Ex. G at 1. Consistent with Masimo's offer, Masimo has gathered prototypes of the W1 with the wave electrode and the Freedom Watch, as shown in the images below. Masimo continues to search for additional prototypes, including prototypes of the Freedom Band.

The Honorable Jennifer L. Hall
July 3, 2023

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Prototype of Freedom Watch¹
(MASAD_P_001)



Prototype of Freedom Watch
(MASAD_P_002)

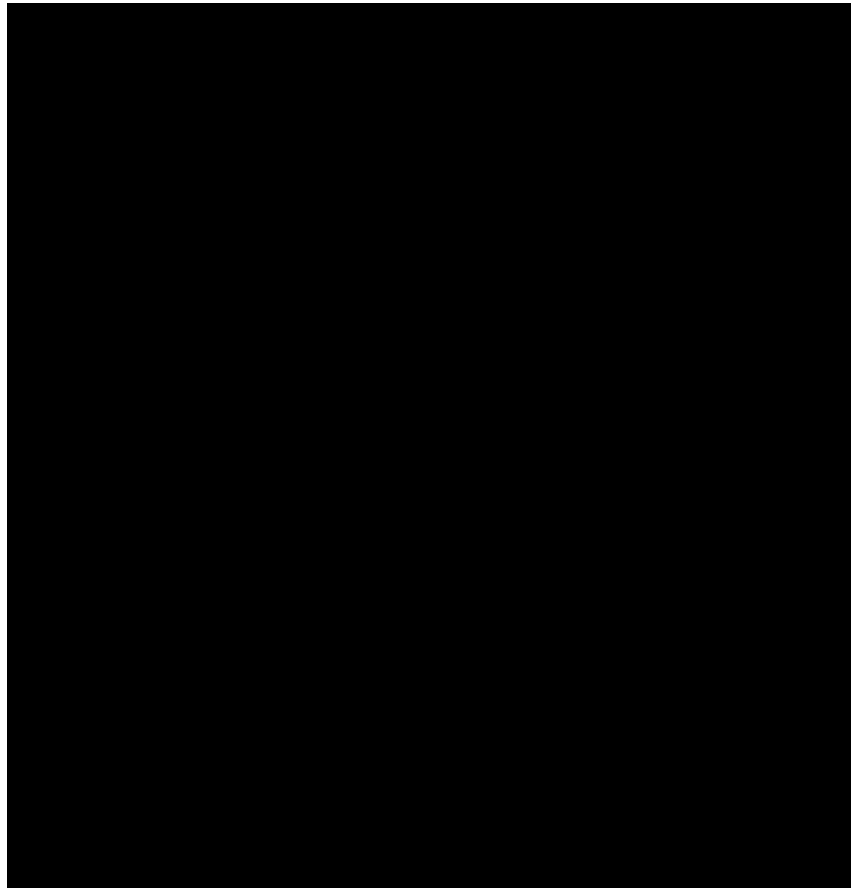


¹ While the Freedom Watch prototypes shown above include arc-shaped ECGs, the commercial versions will include the wave electrode.

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July 3, 2023

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Apple argues the Court should not believe Masimo's representation that it lacks commercial samples of the Forthcoming Products. Ltr. Br. at 2. Apple points to advertisements on Masimo's website, that Masimo's CEO wore a sample during the parties' April trial in CDCA, and a device in a glass case at a professional tennis tournament. *Id.* But Apple's evidence confirms what Masimo has repeatedly told Apple: Masimo is promoting products it is developing and will commercially release in the future. [REDACTED].

[REDACTED],
Masimo can produce them to Apple. In the meantime, Apple is welcome to inspect the prototype devices Masimo has gathered thus far.

For these reasons, the Court should deny Apple's motion to compel.

Respectfully submitted,

/s/ John C. Phillips, Jr.

John C. Phillips, Jr. (#110)

cc: All counsel of record (via Email)

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EXHIBIT 1

Filed Under Seal

From: Benjamin Luehrs
To: [Jared Bunker](#); [Apple Masimo Service](#)
Cc: [Knobbe.MasimoDE](#); [Palapura, Bindu A.](#); [Jack Phillips](#); [Greenfield, Leon](#); [Milici, Jennifer](#); [Kerri-Ann Limbeek](#); [Megan C. Haney](#); [Vote, Dominic](#); [Ford, Mark](#); [Jordan Malz](#); [Peter Magic](#); [Megan C. Haney](#); [Moore, David E.](#)
Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - Samples
Date: Wednesday, June 21, 2023 1:49:52 PM

Jared,

Thank you for your email. In view of Masimo's assertion that it does not have physical samples of its allegedly redesigned W1, Freedom, or Freedom band available to exchange, Apple does not agree to an exchange of physical samples. The parties can respectively purchase physical samples and agree as to authentication of those samples following an inspection. However, for Masimo's products that are not currently available for purchase, Masimo must offer samples of those products for inspection as soon as possible. Please confirm that Masimo will do so and identify dates when an inspection can occur. Please also promptly provide an update as to Masimo's investigation into the watch that Mr. Kiani wore at the CDCA trial.

Sincerely,
Ben

From: Jared Bunker <Jared.Bunker@knobbe.com>
Sent: Wednesday, June 21, 2023 2:29 PM
To: Benjamin Luehrs <BLuehrs@desmaraisllp.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>
Cc: Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Palapura, Bindu A. <bpalapura@potteranderson.com>; Jack Phillips <JCP@PMHDELaw.com>; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek <KLimbeek@desmaraisllp.com>; Megan C. Haney <mch@PMHDELaw.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter Magic <PMagic@desmaraisllp.com>; Megan C. Haney <mch@PMHDELaw.com>; Moore, David E. <dmoore@potteranderson.com>
Subject: [Ext] Apple v. Masimo (C.A. Nos. 1377/1378) - Samples

****EXTERNAL EMAIL** This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.**

Counsel,

We have three samples of the Masimo W1 ready to produce -- please tell us where you'd like us to ship them.

Also, for the Apple Watch samples, please ship them to my attention at the below address.

When can we expect to receive the Apple Watch samples?

Sincerely,
Jared

Jared Bunker

Partner

Jared.Bunker@knobbe.com

949-721-2957 Direct

Knobbe Martens

2040 Main St., 14th Fl.

Irvine, CA 92614

www.knobbe.com/jared-bunker

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